

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. M-05/09-276
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Family Services Division substantiating a report of child sexual abuse against the petitioner's son. The Department has moved to dismiss based on the petitioner's failure to file his appeal in a timely manner.

DISCUSSION

In December 2007 the Department substantiated a report of child sexual abuse against the petitioner's son. At the time, the petitioner's son was sixteen and the alleged victim was nine. In a letter received by the Department on April 14, 2008, the petitioner requested a review of the substantiation.

The Department represents that it made several unsuccessful attempts to contact the petitioner to schedule a review hearing. On August 26, 2008 the Department sent the petitioner a letter setting forth its attempts to contact him and noting his lack of response. The letter concluded with

the following conspicuous notice in bold italics: "If we do not hear from you by September 9, 2008 your name will be placed in the Child and Neglect Registry and the review process will end."

On May 15, 2009 the Board received a letter from the petitioner stating that he had "just learned" that his son was in the Registry and asking that it be removed due to "false allegations". An initial telephone status conference was held on June 12, 2009, at which time the petitioner indicated that he wished to challenge the factual basis of the Department's substantiation of sexual abuse against his son. The matter was continued for the Department to furnish the petitioner and the Board with the Department's records of the petitioner's appeal.

At a status conference held on July 6, 2009 the Department orally represented the above procedural history, and indicated that it would file a Motion to Dismiss based on the petitioner's failure to have requested a review in a timely manner. During the status conference the petitioner admitted he had received the Department's letter to him in August 2008 (see *supra*) and conceded that at all times during these proceedings he has resided at the same mailing address. The hearing officer advised the petitioner that he could have

30 days to respond in writing once he received the Department's Motion to Dismiss. The hearing officer also strongly advised the petitioner to try to obtain an attorney.

The Department filed its Motion to Dismiss (setting forth the above procedural history, including a copy of its August 2008 notice to the petitioner) on September 24, 2009. To date, the Board has not received any further response or contact from the petitioner or from anyone acting in his behalf.

ORDER

The petitioner's appeal is dismissed as untimely.

REASONS

Human Services Board Fair Hearing Rule No. 1000.2 provides: "As a general matter, timeliness for appeals is based on the statutes and/or regulations governing a particular program." The jurisdiction of the Department and the Human Services Board to consider appeals regarding the Department's substantiation of reports of child abuse and neglect is set forth as follows, beginning in 33 V.S.A. § 4916a(c) (which became effective September 1, 2007):

A person alleged to have abused or neglected a child may seek an administrative review of the department's intention to place the person's name on the registry by notifying the department within 14 days of

the date the department mailed notice of the right to review. . . The commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 days after the department has mailed notice of the right to review."

Under 33 V.S.A § 4916b(a), which also became effective on September 1, 2007, an individual then has thirty days in which to appeal the Department's administrative review decision to the Human Services Board.

As noted above, the Department's notice regarding its review decision in this matter was mailed to the petitioner on August 26, 2008, giving him until September 9, 2008 to respond. The petitioner's only response to this letter was his appeal to the Board on May 15, 2009. This was more than eight months after the Department's administrative review decision in the case, which is grossly out of the above statutory time limits. Therefore, it must be concluded that the Board does not have jurisdiction to consider this appeal.

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